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SENSITIVE

C O R R E C T E D C O P Y (ADDED PARAGRAPH MARKING 1,3 AND 4)

SIPDIS
THE HAGUE FOR CWC DEL

E.O. 12958: N/A
TAGS: [CA](#) [KTIA](#) [PARM](#) [PREL](#) [CWC](#)
SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): HOST COUNTRY
AGREEMENT WITH CANADA ON CHALLENGE INSPECTIONS (SBU)

REF: A. STATE 112672 08
[1](#)B. OTTAWA 000037 09

[1](#)1. (SBU) Action Request in Paragraph 9.

OBJECTIVES

[1](#)2. (SBU) Department requests Embassy to pursue the following objectives:

-- Work with the Government of Canada to negotiate a Host Country Agreement (HCA) on the conduct of Chemical Weapons Convention (CWC) challenge inspections.

REPORTING DEADLINE

[1](#)3. (SBU) Embassy should report results of discussions with Canadian officials by cable to ISN/CB Eugene Klimson NLT MAY 15, 2009.

POINT OF CONTACT

[1](#)4. (SBU) Please contact ISN/CB Eugene Klimson at (202) 647-5165 or via email for any further background needed to meet our objectives.

BACKGROUND

[1](#)5. (SBU) The United States and Canada have been negotiating a Host Country Agreement (HCA) on the conduct of Chemical Weapons Convention (CWC) challenge inspections since 2005. In November 2008, the United States delivered a Draft Memorandum of Understanding (MOU) to Canada (Ref A) and held subsequent negotiations in December 3, 2008 during the CWC Conference of States Parties in The Hague. At the end of negotiations, three brackets remained outstanding. On January 13, 2009 Canada provided new text for U.S. consideration based on the December discussions (Ref B).

[1](#)6. (SBU) Washington has reviewed Canada's amendments and can accept the proposed changes with two administrative changes to the Annex Title. Canada had proposed: &EXCHANGE OF NOTES BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND CANADA ON PROCEDURES GOVERNING THE CONDUCT OF CHALLENGE INSPECTIONS UNDER THE CWC.8 We accept that title, but would replace the word -es8 with the word &letters8 and

replace the initials &CWC8 with the words &CHEMICAL WEAPONS CONVENTION (CWC).8 which is to fully write out &CWC8. The United States also accepts Canada's understanding that in participating on the inspection host team, the other Participant would work communications through the Inspected State Party Head of Delegation based on the legislative requirements in Canada. This would not, however, affect normal U.S. communications with the Organization for the Prohibition of Chemical Weapons (OPCW) from Washington or its Permanent Mission in The Hague.

¶7. (SBU) Washington also seeks a substantive change, which is to delete paragraph III.D on managed access. The United States and Canada have been unable to agree on terminology concerning the implementation of managed access by the other State Party. Therefore, the United States is recommending dropping the text addressing managed access and may address it at a later date.

¶8. (SBU) As a courtesy, the United States reprinted the draft final text at the end of the cable for final review by the Canadian Government. Upon their concurrence, the U.S. National Authority is ready to sign the letter and will forward the final signed copy upon concurrence of the Canadian Government.

ACTION REQUEST

¶9. (SBU) Drawing on the background and talking points, Embassy Ottawa is requested to deliver the talking points in paragraph 9 and the draft HCA text in paragraph 10 to the appropriate Canadian officials and report the results of these discussions to Washington.

TALKING POINTS

¶10. (FOUO) Talking points for delivery:

- The United States appreciates Canada's continued cooperation in concluding a Host Country Agreement (HCA) in the event of a Chemical Weapons Convention (CWC) challenge inspection involving both U.S. and Canadian assets.
- On January 13, 2009, your government provided us with a few amendments to the U.S. draft HCA proposal discussed at the 2008 CWC Conference of States Parties in The Hague.
- The United States is pleased to inform you that we can accept the final changes and we are ready to exchange diplomatic letters.
- We suggest two administrative changes to the title of the Annex. First we propose changing the phrase &exchange of notes8 to &exchange of letters8 and to replace the acronym &CWC8 with &Chemical Weapons Conventions (CWC)8 since the Annex is a separate attachment.
- We also deleted paragraph III.D. managed access.
- We also understand Canada's legislation requires that, except for cases involving a sovereign vessel or aircraft of another state, Canada must always be the Inspected State Party for an inspection occurring on Canadian territory. Therefore, when participating in an inspection, we will respect that Canada will be the official voice for the Inspected State Party when U.S. sovereign vessels or aircraft are not involved.
- This would not affect normal diplomatic communications with the OPCW through capital or permanent representation in The Hague where U.S. interests are involved.
- We have for you a final draft as we understand your changes, and will forward a letter from Washington upon your

final concurrence.

- We are very pleased to bring this matter to a successful conclusion.

End of Talking Points.

DRAFT TEXT

¶11. (FOUO) Text for Delivery to Canadian Officials:

Mr. James A. Junke
National Coordinator
Canadian National Authority for the Chemical Weapons
Convention
Department of Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, Canada K1A 0K6

Dear Mr. Junke

I have the honor to refer to the discussions between the United States and Canada concerning challenge inspections under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC).

The United States proposes that a set of arrangements and principles for the conduct of challenge inspections under the Convention apply to the conduct of any challenge inspection in the territory of one Participant in which the assets of the other Participant may be within, or in the vicinity of, the inspection site.

Nothing in these principles should be interpreted as altering in any way any agreements in force between the United States and Canada. These principles should be interpreted in a manner that is consistent with the Convention and any agreements entered into between either Participant and the Organization for the Prohibition of Chemical Weapons (OPCW).

In the event there is a conflict between the provisions of the Convention or any agreement between either Participant and the OPCW and this arrangement, the provisions of the Convention or such agreement with the OPCW should take precedence.

In this regard, the United States understands that the Canadian National Authority has informed the Director-General of the OPCW that, in accordance with Canadian domestic legislation, Canada will be the sole inspected State Party for any challenge inspection on its territory except for cases in which a sovereign vessel or aircraft of another country is the subject of the inspection. Canada understands that the United States does not have domestic legislation similar to Canada's that would require that the United States be the sole inspected State Party for any challenge inspection on its territory.

The arrangements and principles may be amended in writing by the United States and Canada.

If the principles and arrangements set out in the Annex below are acceptable to the Government of Canada, I have the honor to suggest that this letter and your reply to that effect will place on record the understanding of the United States and Canada in this matter that will come into effect on the date of your reply and will remain in effect until 90 days after the receipt of notice of termination by either Canada or the United States.

Yours sincerely,

Robert Mikulak

National Authority for the Chemical Weapons Convention
Department of State
Washington, D.C.
USA

Annex

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND CANADA ON PROCEDURES GOVERNING THE CONDUCT OF CHALLENGE INSPECTIONS UNDER THE CHEMICAL WEAPONS CONVENTION (CWC)

For the purpose of these principles and arrangements, &Host State Party⁸, denotes the State on whose territory lie facilities or areas of another State Party to this Convention, that are subject to inspection under the CWC. The &non-Host Party⁸ is the State on whose territory a challenge inspection is not taking place but that may have an asset potentially affected by a challenge inspection. &Inspected State Party⁸ is used in accordance with the Verification Annex, Part I.12. The &other Participant⁸ denotes the Participant that is not the inspected State Party.

The United States and Canada affirm the importance of the effective implementation of the CWC and intend to work closely and cooperatively together in order to fulfill their obligations concerning the conduct of a challenge inspection under the Convention.

The United States and Canada affirm that nothing in this Annex should be interpreted as altering in any way any agreements in force or understandings in effect between the United States and Canada or in a manner that is inconsistent with the Convention, or any agreements entered into between either Participant and the OPCW.

1I. In the event that a challenge inspection takes place on the territory of the United States or Canada, and that inspection may affect the assets of the non-Host Party, the United States and Canada each intend to:

1A. Coordinate to ensure that their sovereign rights can be exercised and national interests protected in meeting their obligations under the Convention.

1B. Make every effort to provide, within two hours of receipt of a notification of a challenge inspection on its territory or in any other place under its jurisdiction from the Organization for the Prohibition of Chemical Weapons (OPCW), copies of the Inspection Notification and the identity of the Requesting State Observer to the other Participant. In addition, the Inspected State Party intends to provide a copy of the Inspection Mandate to the other Participant when received from the inspectors. The points of contact for notifications to the United States are the United States Nuclear Risk Reduction Center (telephone 01-202-647-9166, fax 01-202-647-4892) and the U.S. Northern Command Joint Operations Center (01-719-554-2361, fax 01-719-554-2368). The point of contact for notification for Canada is (Canada to provide).

1C. Exercise full sovereign rights with regard to its government sovereign vessels and aircraft. When government sovereign vessels and aircraft are the sole object of an inspection, the Participant owning or operating such assets should be the Inspected State Party. If the Host State Party, not owning these assets, is designated the Inspected State Party, the Host State Party should advise the OPCW that the government vessel or aircraft is solely under the jurisdiction and control of the non-Host State Party and that, therefore, the non-Host State Party is properly the Inspected State Party.

1D. Provide each other, as soon as possible after receipt of initial notification, any relevant information about the inspection as such information becomes available.

¶E. Upon receipt of the list of inspectors and inspection assistants, consult with each other if any individuals on the list raise concerns, and on the access that should be accorded that individual.

¶F. Consult with each other regarding whether to accept an observer designated by the Requesting State Party whenever assets from both Participants may be within the inspectable area, and on the degree of access that the requesting State Party observer should be accorded.

¶G. Consult with each other concerning the handling of media relations before, during, and after a challenge inspection.

¶H. Reach agreement on the release of any information provided pursuant to these principles and arrangements to any third party.

¶I. Exchange the names of approved inspectors on an annual basis.

II. The Host State Party intends to:

¶A. Expedite the entry of the liaison officers, and their equipment and material (possibly including a mobile laboratory) from the non-host State Party into its territory, which may include, but is not limited to, the provision of aircraft and diplomatic clearance, and assistance with customs.

¶B. Manage the conduct of the inspection when taking place on its territory, to take into account the need of personnel from the non-host State Party to travel from the territory of the non-host State Party to the inspection site in order to assist the host State Party in the expeditious conduct of the inspection.

III. The Inspected State Party should:

¶A. Allow the other Participant to send representatives to observe and advise the Inspected State Party on any matters pertaining to the national security interest of the other Participant at all stages of the challenge inspection, including, but not necessarily limited to: point of entry procedures; perimeter negotiations; inspection of OPCW approved equipment; pre-inspection briefing; conduct of inspection and, sampling and analysis and at all levels (including sub-team activities).

¶B. Not provide access to any area, building, or facility used by the other Participant without prior consultation with the designated representative of the other Participant.

¶C. Not provide access to any citizen, equipment or vehicle owned by the other Participant without prior consultation with the designated representative of the other Participant and an opportunity to prepare its asset.

¶D. Coordinate with the other Participant on the provision of access or information to be given to the inspection team concerning an asset of the other Participant.

¶E. Provide the other Participant, on a cost-recovery basis, any administrative support required or requested, including transportation, accommodation, lodgings, meals, communications, and any necessary protective clothing or equipment.

¶F. Ensure that the other Participant, if deemed necessary, has up to 108 hours from the inspection team's arrival at the point of entry before providing the inspection team access to its assets inside the perimeter.

¶G. Provide the other Participant a copy of the Preliminary Inspection Report and Draft Final Inspection Report as soon as such findings are provided to the Inspected State Party by the Inspection Team.

¶H. Provide the other Participant an opportunity to offer comments within 24 hours on the Preliminary Inspection Report hours and similarly offer comments within 48 hours on the Draft Final Inspection Reports with respect to any parts thereof pertaining to the national security interests of the other Participant.

¶I. Consult with the other Participant on any request for the extension of the period of inspection.

¶J. Provide to the other Participant, without delay, all information resulting from the inspection pertaining to the national security interests of the other Participant.

End of Annex.

CLINTON